

3. AUTHORITY

- a. Bureau of the Budget (OMB) Circular A-72.
- \*b. Public Law 91-596, Occupational Safety and Health Act of 1970, as amended.
- c. Executive Order 11612, Occupational Safety and Health Programs for Federal Employees.
- d. Public Law 79-658, 5 U.S.C. 7901.
- e. 31 U.S.C. 483a.
- f. FPM Chapter 792, Federal Employee Occupational Health Programs.

4. DEFINITION

Occupational medicine is devoted to the maintenance and improvement of the health of employees with emphasis on the prevention, diagnosis, treatment, and care of illnesses and injuries caused or aggravated by the work environment. This includes studies directed toward a better understanding of the causes and mechanisms of prevention and care as related to the NASA employee population.

5. POLICY

- \*a. Program Orientation. Employee health programs shall reflect the requirements of the population they are to serve. The

\*Changed by this revision

Strict legislative guidelines govern what can and cannot be done in relation to the operation of employee health/fitness programs within the Federal Government.

Section 7901(a) of Title 5, United States Code, provides that:

The head of each agency of the Government of the United States may establish, within the limits of appropriations available, a health service program to promote and maintain the physical and mental fitness of employees under his jurisdiction.

Such programs may be established by contract or otherwise and are limited to certain constraints, among them that they be "preventive programs relating to health." (5 U.S.C. § 7901).

Circular Number A-72 from the Office of Management and Budget (June 18, 1965) states:

The health and fitness of Federal employees for efficient performance of their assigned work is an important element in a progressive personnel management system and in effective administration of Federal programs. The head of each department and agency, therefore, will review existing programs and is authorized and encouraged to establish an occupational health program to deal constructively with the health of the employees of his department or agency in relation to their work.

Regulations of the General Services Administration (GSA) favor the concept of funded, inter-agency health/fitness programs to maximize existing facilities. The GSA "Guidelines for Establishment of Physical Fitness Facilities in Federal Space," published in the Federal Register, (Vol. 43, No. 233 - Monday, December 4, 1978) states:

"most. . . requests (for the establishment of small in-house physical fitness facilities) are denied on the grounds that these facilities are too costly for the limited number of employees that would use them or because there is no specific program that assures long term use. . . however GSA recognizes. . . a concern for the physical well-being of Federal employees and . . . has developed guidelines, for the establishment of physical fitness facilities within . . . federally controlled space. (Emphasis supplied)

These "guidelines" require, among others:

- . A medical orientation, including screening procedures, individualized exercise programs, identification of high-risk individuals, and appropriate followup activities;
- . Provision for the establishment of a professional staff which would work under the supervision of the medical unit;
- . An approach which will consider key health behavior related to degenerative disease, including smoking and nutrition;
- . Provision for equal opportunities for men and women, and all full-time employees, regardless of grade level.

Only large highly organized programs with extensive space and sufficient exercise equipment can meet these specifications.

The United States Department of Health and Human Resources states in its publication Forward Plan for Health FY 1978-82 (August 1976):

Last year's Prevention Theme stressed the importance of physical fitness and encouraged places of work to provide facilities and time for employees to participate in individual and group physical fitness activities.

The experience of the President's Council confirms that such on-the-job programs of regular, vigorous exercise can make an important contribution to the health, well-being, and productivity of working people while reducing the human and financial cost of physical degeneration.

There has been an encouraging growth of such programs in public agencies and private companies throughout the country.

Since authority exists for Federal agencies to promote and maintain the physical fitness of their employees, the PHS strongly supports the Council's recommendation that all branches and departments of the Federal Government provide their employees with time and facilities for regular, vigorous physical activities. (Emphasis supplied)

The Policy Statement of the President's Council on Physical Fitness and Sports, Physical Fitness Program for Federal Employees

(October 23, 1973) says:

It is hereby recommended by the President's Council on Physical Fitness and Sports that heads of agencies in the Federal Government recognize the importance that the contributions of regular exercise can make to job performance as well as employee health and do whatever (is) in their power to make provisions for Federal employees to participate in either on-the-job exercise programs or exercise programs after duty hours. Exercise rooms, showering and dressing facilities should be provided wherever feasible.

The President of the United States, in his Executive Order 11807 of September 28, 1974, stated that:

As the nation's largest employer, the Federal Government has a special obligation to set an example for all employees by providing for a safe and healthful working environment for its employees.

In an address given at the National Conference on Physical Fitness and Sports for All (February 1, 1980), the President said:

I consider organized physical fitness and the programs associated with them to be the best possible investment in American health. Everything we do to make Americans more physically fit pays off handsomely . . . it cuts medical bills, it helps our people to live longer, and it adds to the quality of each day of life that we live.

Today (2/1/80) I am directing Governor Apodaca and the President's Council on Physical Fitness to do several things that might enhance the results that we have already achieved with this great program, to take a number of steps to upgrade our nation's physical fitness program (among them) to urge all employers through personal messages from me . . . to make facilities available for employee fitness programs, (and) to encourage all Federal departments and agencies to support physical fitness programs . . . (emphasis supplied) Governor Apodaca knows that I am very eager to give him all the backing he needs in carrying out these steps and particularly in the Federal Government.

As a matter of policy, stated by the Executive Order 11491, as amended, the Federal Government recognizes that the well-being of employees and the efficient administration of Government are benefited by providing employees with an opportunity to participate in the formulation and implementation of personnel policies and practices affecting the conditions of their employment . . . including presentation of its (sic.) views to the executive branch, the Congress, or other appropriate authority. It is therefore well within the legal authority of individual employees interested in improving and maintaining a high level of health/fitness, through an agency sponsored and endorsed on-site program, to organize and present their views to management.

Sedentary office routines are a serious occupational health problem whose predictable consequences include cardiovascular disease, low back problems, premature aging, hypertension, and chronic fatigue. Morbidity and mortality statistics indicate that premature disabilities are now more common among office workers and executives than policemen and firemen.

Habitual inactivity has been identified by the U.S. Public Health Service's Forward Plan as a "serious national health problem" directly-related to the alarming rates of coronary heart disease, hypertension, obesity, lower back problems, and other muscular difficulties. Though much remains to be learned, the Public Health Service believes that the available evidence is inclusive: fitness is an inexpensive, effective answer to the health problems of sedentary living.

The human and pecuniary costs of unfitness are staggering. Outlays for insurance benefits, sick leave, and disability payments constitute a large portion of Government personnel costs. The hidden costs of chronic fatigue, absenteeism, avoidable health problems, and premature retirements are equally great. Absenteeism alone costs the Executive branch more than 24 million work days and \$1.1 billion every year.

In an 18-month, \$175,000 study, (ending November 1, 1978) the U. S. Chamber of Commerce found that employee health costs were rising at twice the rate of wages, and that they will double in five years and quadruple in ten years. Their first and foremost recommendation to employers seeking cost containment strategies was the establishment of:

.Physical fitness programs among employees, along with nutrition and health screening efforts. 1

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Alice Bonner, "Employers Urged to Wield Health-Cost Clout", the Washington Post, November 1, 1978, n.p.

According to Ammunition, a publication of the United Automobile Workers, medical care costs have risen by 700% in the past twenty years - from \$78 per person annually to \$547. This is twice the increase in the rate of inflation for the same period, with doctor's fees rising 49% faster and hospital charges 105% faster than other consumer items. In the past ten years, hospital care costs have tripled to an average \$113 per day now, from \$37, with the cost of an average hospital stay now at \$885. 2

By acting now, the Federal Government can point the way for all employers while contributing to the health and well-being of more than 2.5 million men and women in the federal service. The recommendation that health/fitness programs be set up in the workplace, novel as it may appear, is only an extension of the Nation's historic commitment to occupational health, a commitment most recently affirmed by the Occupational Health and Safety Act of 1970.

Authority for the transfer of money between agencies for the provision of health/fitness programs and services exists under 31 U. S. C. 686 (Purchase of supplies, equipment or services by one government bureau or department from another government bureau or department).

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World of Work Report, Work in America Institute, Inc.,  
October, 1977, p. 119.

Any executive department or independent establishment of the Government, or any bureau or office thereof, if funds are available therefor and if it is determined by the head of such executive department, establishment, bureau, or office to be in the interest of the Government so to do, may place orders with any other such department, establishment, bureau, or office for materials, supplies, equipment, work or services, of any kind that such requisitioned Federal agency may be in a position to supply or equipped to render, and shall pay promptly by check to such Federal agency as may be requisitioned, upon its written request, either in advance or upon the furnishing or performance thereof, all or part of the estimated or actual cost thereof as determined by such department, establishment, bureau, or office as may be requisitioned . . . . (31 U.S.C. § 686 (a) ). (Emphasis supplied).

Amounts paid as provided in subsection (a) of this section shall be credited, (1) in the case of advance payments, to special working funds, or (2) in the case of payments other than advance payments, to the appropriations of funds against which charges have been made . . . . (31 U.S.C. § 686 (b) ).

Legislation exists which extends liability coverage to employees participating in an in-house Government sponsored health/fitness program.

The general guidelines for liability in the workplace indicate that any Government employee acting within the scope of his/her employment would be covered by the Federal Employees Compensation Act (FECA), for injuries sustained during participation in such activities when the health/fitness program comes within the scope of employment. The ECAB stated in Stephen M. Greenleigh, 23 ECAB 53 (1971), that the proper legal criteria to be used are correctly set forth in Larson, Workman's Compensation Law:

Larson states that (health/fitness) activities are in the course of employment when:



- (1) They occur on the premises during a lunch or recreation period as a regular incident of the employment; or
- (2) The employer, by expressly or impliedly requiring participation, or by making the activity part of the services of an employee, brings the activity within the orbit of the employment.
- (3) The employer derives substantial direct benefit from the activity beyond the intangible value of improvements in employee health and morale that is common to all kinds of recreation and social health.

Larson, in discussing the principles and cases upon which the three tests are based, states that these are

three independent links . . . by which recreation (health/fitness) can be tied to the employment, and if one is found, the absence of the others is not fatal.

With respect to the time and place of the health/fitness activity,

Larson comments,

when seeking for a link by which to connect an activity with the employment, one has gone a long way as soon as one has placed the activity physically in contact with the employment environment, and even further when one has associated the time of the activity somehow with the employment.

Where this is the situation,

the exact nature and purpose of the activity itself does not have to bear the whole load of establishing work connection, and consequently the employment-connection of that nature and purpose does not have to be as conspicuous as it otherwise might.

Precedent has even been established within the Federal Government for the granting of administrative leave time to individuals for the express purpose of participating in an authorized and officially recognized health fitness program. Law Enforcement Assistance Administration Instruction Number I 1460.1(e) (September 30, 1976) for example states: